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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,430	08/09/2001	Roy Martin	1510.023	6407
21917	7590	10/08/2003	EXAMINER	
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			ANTHONY. JOSEPH DAVID	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/927,430	ROY MARTIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joseph D. Anthony	1714	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 10-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-17, drawn to a solid calcium hypochlorite formulation, classified in class 252, subclass 187.29.
  - II. Claims 18-23, drawn to a method for applying a polymeric alkali salt to a solid calcium hypochlorite, classified in class 252, subclass 186.36.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product can be made by intimately admixing the solid calcium hypochlorite with the polymeric alkali salt.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. This application contains claims directed to the following patentably distinct species of the claimed invention for the polymeric alkali salt component.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. During a telephone conversation with Peter C. Lando on 2/27/03 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-17. For the election of species Mr. Lando elected polyepoxysuccinate. Claims that read on the elected invention and elected species are claims 1-9. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-23 withdrawn from

Art Unit: 1714

further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 4 and 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 4 and 7 are indefinite because calcium and magnesium are not alkali metal but are rather alkaline earth metals.

Claim 6 is indefinite because the term "further including" does not make sense since the listed deposit controlling agents may already be present as the polymeric alkali salt.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 1714

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims –12 are rejected under 35 U.S.C. 102(b) as being anticipated by Faust et al. U.S. Patent Number 4,087,360 or Kamel et al. U.S. Patent Number 5,230,822..

Faust et al teaches calcium hypochlorite tablets by mixing the calcium hypochlorite with sodium polyacrylate and than forming tablets. Applicant's claims are deemed to be anticipated over example 1. Also see column 2, lines 28-39.

Kamel et al teaches wax-encapsulated particles which may be calcium hypochlorite particles. Applicant's claims are deemed to be anticipated over column 5, lines 41-45. Also see claim 4.

12. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faust et al. U.S. Patent Number 4,087,360.

Faust has been described above and differs from applicant's claimed invention in that there is no direct teaching (i.e. by way of an example) to where the sodium

Art Unit: 1714

polyacrylate is used to coat the calcium hypochlorite tablet. It would have been obvious to one having ordinary skill in the art to use the disclosure of the reference in column 2, lines 40-48, as strong motivation to actually coat the calcium hypochlorite tablet with sodium polyacrylate since such is directly suggested.

13. Claims 1-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Oshalack et al. U.S. Patent Number 5,639,476.

Oshalack et al teaches coating calcium hypochlorite with an aqueous dispersion of a hydrophobic polymer, such as polyacrylates. Applicant's claims are deemed to be anticipated over column 18, lines 16-36. In the alternative, it is a little unclear if the coating was actually carried out or is just a very strong suggestion. If it is strong suggestion, that applicant's invention is deemed to be obvious since there is strong motivation to actually coat the calcium hypochlorite with a water-phobic polymer salt.

14. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faust et al. U.S. Patent Number 4,087,360 or Oshlack et al. U.S. Patent Number 5,639,476, both references in view of Perez et al. U.S. patent Number 5,518,629

The primary references have been described above and they differ from applicant's claimed invention in that there is not direct disclosure to applicant's claimed deposit controlling agents.

It would have been obvious to one having ordinary skill to use the direct disclosure of Perez et al to polyepoxysuccinate as a scale and deposition inhibitor as strong motivation to add such agents to the calcium hypochlorite polymeric alkali treated compositions as taught by the primary references.

***Prior-Art Cited But Not Applied***

15. Any prior-art reference which is cited on FORM PTO-892 but not applied, is cited only to show the general state of the prior-art at the time of applicant's invention.

***Examiner Information***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (703) 308-0446. This examiner can normally be reached on Monday through Thursday from 7:35 a.m. to 6:00 p.m. in the eastern time zone. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (703) 306-2777. The group FAX machine number is (703) 872-9306. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner. Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number

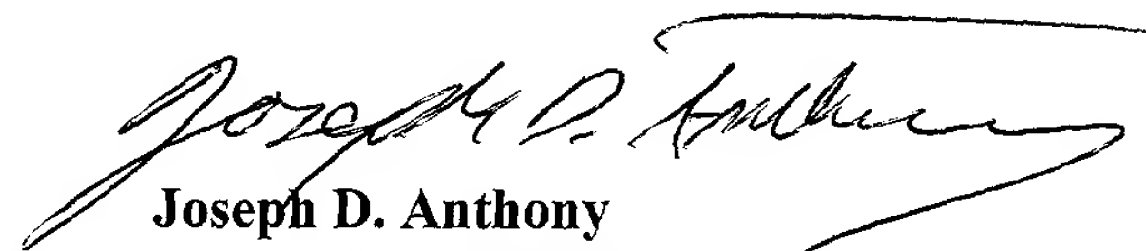


Application/Control Number: 09/927,430

Page 8

Art Unit: 1714

is (703) 308-0651. The receptionist is located on the 8<sup>th</sup> floor of Crystal Plaza 3 (e.g. CP-3) and will be the welcome point for all visitors to the building.



**Joseph D. Anthony**  
**Primary Patent Examiner**  
**Art Unit 1714**

10/1/03